

Appl. No. 10/603,958  
Atty. Docket No. CM2679M  
Amtd. dated 05/18/2005  
Reply to Office Action of 01/19/2005  
Customer No. 27752

REMARKS

Amendments to the Claims

Claims 1-2, 4-19, and 21-28 are pending in the present application. Claims 3 and 20 have been canceled. No additional claims fee is believed to be due.

Claim 1 has been amended as shown above. Support for this amendment can be found in the original claim 3 and at page 6, lines 23-27 of the specification.

Claims 4 and 8 have been amended to depend from claim 1. Support for these amendments can be found in the original claims.

Claim 17 has been amended as shown above to recite more particularly that the information relating to the coloring product is the information which is being transmitted to the micro-processing system. Support for this amendment can be found in original claim 17 and at page 5, lines 24-30 of the specification.

Claim 18 has been amended as shown above. Support for this amendment can be found in the original claim 20 and at page 5, lines 5-15 of the specification.

Claim 21 has been amended to depend from claim 18. Support for this amendment can be found in the original claims.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Foreign Priority Document

In support of Applicants' claim to foreign priority under 35 U.S.C. § 119, submitted herewith is a certified copy of EPO Application No. 02254475.3, filed June 26, 2002.

Objections to the Drawings

The Examiner has objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(5). Specifically, the Examiner asserts that the reference characters for elements 2, 4, 6, 8, 10, and 12, which are depicted in Figures 8-12, are not mentioned in the written description. The Examiner indicates that corrected drawings sheets or amendment to the specification to add the reference characters in the description are required to avoid

abandonment of the application. Applicants respectfully traverse the present objections based on the following comments.

The written description of the present application, as originally filed, contains mention of the reference characters for elements 2, 4, 6, 8, 10, and 12, which are depicted in Figures 8-12. Specifically, Applicants respectfully direct the Examiner to page 4, line 26 to page 5, line 15 of the specification. The cited portion of the specification contains a description of the apparatus 2 described in Figures 8-12. The apparatus 2 comprises a base 4, a computer screen 6 and a mirror 8 both mounted on an adjustable support 10 which can pivot relatively to the base 4, and a tray 12 fixed to the base 4.

Therefore, the written description and the drawings of the present application, as filed, comply with 37 C.F.R. § 1.84(p)(5). As a result, submission of corrected drawings sheets or an amendment to the specification to add the reference characters in the description is believed to be unnecessary, and Applicants respectfully request that the present objection be withdrawn.

#### Objections to the Specification

The Examiner has objected to the specification as failing to provide an explanation of each of the drawing figures submitted. Specifically, the Examiner asserts that there is no mention of Figures 2-7. Further, the Examiner asserts that the elements shown in Figures 8-12 are not identified and explained. The Examiner additionally states that the elements that are discussed in the disclosure need to be associated to their corresponding figures. In particular, the Examiner refers to the description of element 6 (*i.e.*, computer screen 6) at page 8, line 29 and at page 9, line 14. Applicants respectfully traverse the present objections based on the following comments.

First, the written description of the present application, as originally filed, contains mention of Figures 2-7. Applicants respectfully direct the Examiner to page 3, lines 25-33 for a brief description of Figures 2-7. Further, for a more detailed description of each respective figure, Applicants respectfully direct the Examiner to page 5, line 22 for mention of Figure 2; page 6, line 15 for mention of Figure 3; page 6, line 32 for mention of Figure 4; page 8, line 12 for mention of Figure 5; page 9, line 12 for mention of Figure 6; and page 9, line 26 for mention of Figure 7. Thus, there is explanation in the written description of Figures 2-7.

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Second, as discussed above with respect to the objections to the drawings, the written description of the present application contains mention of the reference characters for elements 2, 4, 6, 8, 10, and 12, which are depicted in Figures 8-12. Specifically, Applicants respectfully direct the Examiner to page 4, line 26 to page 5, line 15 of the specification. Thus, the elements shown in Figures 8-12 are identified and explained in the written description.

Third, the written description of the present application associates the elements which are discussed to their corresponding figures. Applicants respectfully direct the Examiner to page 4, lines 27-30 of the specification, at which it is stated that apparatus 2 and its additional elements are depicted in Figures 8-12. Thus, one of ordinary skill in the art would understand that apparatus 2 and its additional elements, including computer screen 6, are associated with any of Figures 8-12.

Therefore, the written description of the present application, specifically with respect to the discussion of the drawings figures, complies with the requirements of 37 C.F.R. § 1.71. Accordingly, Applicants respectfully request that the present objection be withdrawn.

#### Rejection Under 35 U.S.C. § 112

Claim 17 is rejected under 35 U.S.C. § 112 as being unclear. Specifically, the Examiner asserts that there is insufficient antecedent basis for the limitation “said information is transmitted” because claim 1, from which claim 17 depends, discloses two types of information.

Claim 17 has been amended as shown above to recite more particularly that the information relating to the coloring product is the information which is being transmitted. As a result, it is believed that this rejection has been obviated.

#### Rejections Under 35 U.S.C. § 103(a) Over U.S. Patent No. 6,719,565 to Saita et al.

Claims 1-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,719,565 to Saita et al. (“Saita”). Applicants respectfully traverse this rejection because Saita, as it is applied by the Examiner as a published U.S. patent in the present rejection, is not prior art under any section of 35 U.S.C. § 102 to support a rejection under 35 U.S.C. § 103(a). Saita published as a U.S. patent on April 13, 2004,

which is after the earliest priority date of the present application of June 26, 2002. Accordingly, Saita is not prior art with respect to claims 1-28 of the present application. Thus, claims 1-28 are novel and nonobvious over Saita.

Alternatively, Applicants assume that the Examiner has applied Saita in the present rejection as an English translation of the PCT application equivalent to Saita, which published on May 10, 2001 as WO 01/32051. This publication date is more than one year before to the earliest priority date of the present application of June 26, 2002.

In making the present rejection, the Examiner asserts that Saita teaches a hair color advice system which enables the user to input her image into the system, builds a simulated image with a change in hair color, and displays the results. Additionally, the Examiner asserts that the system of Saita suggests a hair dye to achieve the color desired by the user. The Examiner asserts that the system of Saita is similar to that of Applicants' claimed invention and, thus, Applicants' claimed invention is unpatentable. Applicants respectfully traverse the present rejection based on the following comments.

Saita does not teach or suggest all of Applicants' claim limitations and, therefore, does not establish a *prima facie* case of obviousness. *See MPEP 2143.03.* "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Furthermore, if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

As currently amended, Applicants' claim 1 recites a method comprising the steps of: (a) inputting information relating to a coloring product in a micro-processing system, (b) inputting information relating to an initial color of a substrate in the micro-processing system, *wherein the information relating to the initial color of the substrate is a matching color selected from a predetermined set of colors*, and wherein step a and b may be performed in any order, (c) predicting from the input information a likely result of the coloration of the substrate, and (d) displaying the likely result. Applicants' claimed method quickly and simply predicts the likely result of coloration of a substrate with a specific coloring product. Because inputting the necessary information is simple and easy, the claimed method is useful at the point of purchase of coloring products, especially where a large choice of different coloring products is available.

In contrast to Applicants' claimed method, the method of Saita involves inputting data corresponding to a subject's image (*i.e.*, the subject's face and hair) into a computer. The computer of Saita is programmed to analyze the image data to distinguish the hair area and electronically change the hair area to a new desired color. An image with a new desired color, which is specified by the subject, is displayed on a display screen. The computer then is used to predict a coloring product suitable for providing the new desired color to the subject's hair.

The method of Saita, however, does not involve inputting information relating to the *initial color* of a substrate by *selecting a matching color from a predetermined set of colors*. Rather, the initial color of the subject's hair is input as a part of the subject's image data. To input the subject's image data, Saita teaches using a digital camera to take a still picture of the subject's image, or a photograph of the subject is scanned with an image scanner. The use of a digital camera or an image scanner is more complicated and likely requires additional operation time compared to Applicants' claimed method. Furthermore, a digital camera and an image scanner are expensive pieces of equipment, which makes them disadvantageous for use in large-scale production of an apparatus which carries out the method.

With respect to the limitation of selecting a matching color from a predetermined set of colors, the Examiner asserts that Saita teaches that an array of simulated hair colors are displayed. Specifically, the Examiner refers to Figure 1 of Saita and column 4, lines 53-67 of Saita. This disclosure of Saita, though, is not directed to a step of inputting the *initial color* of a substrate. Instead, what Saita displays in its method is an array of the simulated images (*i.e.*, images wherein the hair color area has been changed to a desired potential end hair color). Saita, at column 4, lines 56-58, states that "the subject may generally indicate the *desired* hair color from among the simulated images displayed" (emphasis added).

As a result, Saita does not teach or suggest each and every limitation of Applicants' currently amended claim 1, as well as claims 2 and 4-17, which contain the limitations of claim 1. Therefore, claims 1, 2, and 4-17 are novel and nonobvious over Saita.

With respect to currently amended claim 18, an apparatus which implements the claimed method is recited. Specifically, the apparatus of claim 18, as currently amended,

comprises: (a) a micro-processing system; (b) means for inputting information relating to the coloring product in the micro-processing system; (c) means for inputting information relating to the initial color of the substrate in the micro-processing system, *wherein the means for inputting information relating to the initial color of the substrate is an electro-mechanical device capable of transforming a stimulus selected from a movement or a pressure into an electronic signal*, and wherein the micro-processing system is capable of predicting from the input information a likely result of the coloration of the substrate by the coloring product; and (d) means for displaying the likely result of the coloration as predicted by the micro-processing system. Applicants' claimed apparatus, in carrying out Applicants' claimed method, quickly and simply predicts the result of coloration of a substrate with a coloring product. As mentioned above, the claimed method is useful at the point of purchase of coloring products, especially where a large choice of different coloring products is available, because inputting the necessary information is simple and easy.

In contrast to Applicants' claimed apparatus, the hair color advice system of Saita does not utilize an electro-mechanical device capable of transforming a stimulus selected from a movement or a pressure into an electronic signal to input the initial hair color of the subject. Indeed, the Examiner acknowledges that the use of an electro-mechanical device as required by Applicants' claims is not taught by Saita. Office Action at page 5, lines 6-7. Rather, Saita teaches using a digital camera or an image scanner to input the subject's image data. As discussed above, the use of a digital camera or an image scanner is more complicated and likely requires additional operation time compared to Applicants' claimed method and apparatus.

Additionally, one of ordinary skill in the art would not have been motivated at the time of the present invention, in view of the disclosure of Saita, to modify the hair color advice system of Saita to achieve Applicants' claimed apparatus. Although the Examiner acknowledges that the use of an electro-mechanical device as required by Applicants' claims is not taught by Saita, the Examiner states that Saita uses a computer system which *could be modified* to use an electro-mechanical device. However, modifying the hair color advice system of Saita to use an electro-mechanical device for inputting information relating to the initial color of the substrate, as required by Applicants' claims, would render the hair color advice system of Saita unsatisfactory for its intended purpose.

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An intended purpose of the system of Saita is to display the overall appearance of the subject with a simulated different hair color. *See* Saita at column 1 lines 56-59. To achieve this, as the subject's image (*i.e.*, the subject's face and hair) is subsequently displayed on a monitor, the system of Saita requires the input of the subject's image data with the use of a digital camera or an image scanner. Using an electro-mechanical device capable of transforming a stimulus selected from a movement or a pressure into an electrical signal, such as an interactive computer screen or a light pen or stylus used with an adapted screen, would not allow a subject's image to be input directly into the system. As a result, such a modification would render the system of Saita unsatisfactory for its intended purpose. Therefore, there is no suggestion or motivation to make the modification. *See In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Accordingly, Saita does not teach or suggest each and every limitation of Applicants' currently amended claim 18, as well as claims 19 and 21-29, which contain the limitations of claim 18. Nor is there motivation to modify the system of Saita to achieve Applicants' claimed apparatus. Therefore, in addition to claims 1, 2, and 4-17 discussed above, claims 18, 19, and 21-29 are novel and nonobvious over Saita.

#### CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1-2, 4-19, and 21-28.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By Michael J. Sambrook  
Signature

Michael J. Sambrook

Typed or Printed Name  
Registration No. 56,746  
(513) 626-2269

Date: May 18, 2005  
Customer No. 27752